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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,410	08/18/2000	Alice Mary O'Donnell-Kiely		7256

7590

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Alice O Kiely  
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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/641,410	O'DONNELL-KIELY, ALICE MARY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/20/03
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 99-138 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 99-138 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
     a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 99-103, 105, 107, 108, 109, 113, 119-121, 122, 125-127, 129, 130-133, 135 and 136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dueren (Swiss 649,197) in view of Chan (6,177,110) and Laskey (1,566,329) further in view of Tezuka et al (4,399,153), Firmin (1,769,215), Jones (1,947,010) and Musher (2,217,700).

In regard to claim 99, Van Dueren, as noted in the last Office action, mailed May 23, 2003, discloses a frozen comestible comprising a body of an edible substance and a composite edible support of two materials. Claim 99 now recites that the support is a composite candy support. As evidenced by Chan, it was conventional in the art to employ candy as a handle to support a food material to be eaten like lollipops and frozen confections on sticks. Chan discloses that his edible candy support stick can be a composite including, for example, a main candy shaft and candy particles embedded therein. Laskey, although not disclosing a composite as a support, nevertheless is further evidence of edible candy composites. To modify Van Dueren and substitute one conventional edible composite for another conventional edible composite for its art recognized and applicant's intended function would therefore have been obvious. Tezuka et al, Firmin, Jones and Musher are relied on as further evidence of edible supports for frozen confections. Tezuka et al, for example, employs a support formed from chewing gum. Firmin discloses a candy stick with cocoa butter coating. Jones discloses a candy

support made from hard taffy with a chocolate coating. Musher discloses an edible support with edible flakes or chips. In regard to claim 108, Musher teaches the stick can have a lollipop placed thereon (page 5, column 1, paragraph 7) and to modify the combination for its art recognized and applicant's intended function would therefore have been obvious. In regard to claim 109, Jones discloses a wafer on one side of the confection. To provide two cookies like a conventional ice cream sandwich for its art recognized and applicant's intended function of providing a different feel and taste would have been obvious.

Claims 104, 124, 128, 134 and 137 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Hart et al (6,054,158) who is relied on as in the last Office action to teach it would have been obvious to modify the combinative and provide self-supporting capability to the support.

Claims 106 and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Eales (5,066,502) and Overland (2,500,006), who teaches the use of two handles on a confection is notoriously old and to modify the combination for its art recognized and applicant's intended function would have been obvious.

Claim 110 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Hoyt (4,001,440) who teaches voids in supports for better securement and 3-D frozen comestibles are, of course, notoriously old and to modify the combination for its art recognized and applicant's intended function would have been obvious.

Claim 111 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Oprean(1,913,851) who teaches it is well established to decorate frozen confections and to modify the combination for its art recognized and applicant's intended function would therefore have been obvious.

Claim 112, 123 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Barricini (2,469,509) who is applied for the reasons given in the last Office action.

Claim 114 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Ref. Q (Swiss 647,394) for the reasons given in the Office action mailed May 23, 2003.

Claim 115 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Sueskind and Parr who are relied on for the reasons given in the Office action mailed May 23, 2003.

Claim 116 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Heinrich (5,435,143) who disclose the conventionality of a plurality of frozen confections. To modify the combination and provide a decorative composite would therefore have been obvious.

Claim 138 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 99 above, and further in view of Kocharian et al (4,350,712) in view of Berman (6,261,611), Parr (1,835,719) and Sueskind.

Kocharia et al discloses it is conventional to provide a frozen comestible with a moveable sleeve to expose the comestible. Berman, as well evidenced by Parr and Sueskind teach the

conventionality of edible sleeves or jackets. To modify the combination and provide a moveable, edible sleeve for its art recognized and applicant's intended function would therefore have been obvious.

Applicants arguments filed August 20, 2003 have been considered but are moot in view of the new grounds of rejection necessitated by the amendment.

It is noted that applicant has requested help from the examiner. Beside the fact applicant either has had some experience prosecuting applications or has had experienced help, as evidenced by the fairly accomplished communications, the Office provides help or makes suggestions relative to patentability, if the Office has discerned allowable subject matter. As of now, that has not been the case.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Art Unit: 1761

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/dh  
February 25, 2004

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
3/4/04  
Remsen 8A69